REMARKS/ARGUMENTS

In the restriction requirement dated April 17, 2008 the Examiner delineated the following inventions as being patentably distinct:

Group I: Claim(s) 15, 17-22, 29-32 and 34-50, are drawn to a method of prion detection comprising contacting the sample with an apolipoprotein.

Group II: Claim(s) 16 and 33, are drawn to a method of measuring apolipoprotein B and correlating such measurements to a prion-related disease.

Group III: Claim(s) 27, are drawn to diagnostic kit.

Group IV: Claim(s) 51-57, are drawn to a method for treating a prion disease comprising administration of a modulator of apolipoprotein B.

Applicants provisionally elect with traverse the invention of Group I, Claims 15, 17-22, 29-32 and 34-50, drawn to a method of prion detection comprising contacting the sample with an apolipoprotein. The claims of Group I-IV are integrally linked as product and method of use.

It has been held that products, method of use and method for making are properly presented as a single invention wherein the sole disclosed utility of the product is that recited in the specification. *Ex parte Brock* (POBA, 1961) 134 USPQ 445.

Restriction between a product, the use thereof is proper when the product has other uses. The Examiner has failed to show that other product has other uses.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions that the claims of the restricted groups are patentably distinct. Product method of making or using are interdependent and should be

examined together on the merits, especially wherein the sole disclosed utility is that recited in the specification, 37 CFR 1.475(b) and unity of invention between the groups exists.

Applicants submit that while PCT Rule 13.1 and 13.2 are applicable, 37 C.F.R. 1.475(e) provides in relevant part that "a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to products and the manufacture of said product". The determination of whether a group of invention is so linked as to form a single general inventive concept should be made without regard to whether the inventions are claimed as separate claims or as alternative within a single claim. In fact the International Search Authority has searched all of the claims together as the Office has not shown any evidence that a restriction should now be required when the International Examination Report did not, the restriction is believed to be improper.

Further the M.P.E.P. §803 states as follows:

> "If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits even though it includes claims to distinct and independent inventions."

For the reasons set forth above, Applicants request that the restriction requirement be withdrawn.

Applicants further request that if the invention of Group I is found allowable, withdrawn Groups II-IV, which includes the limitations of the allowable claims, be rejoined.

Respectfully submitted,

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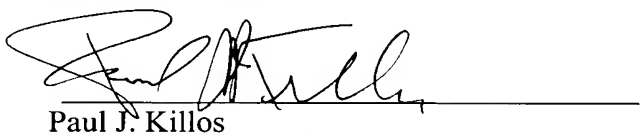

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